Remarks

Office Action dated April 21, 2004 rejects claims 1-5, 8-11, 14, 16, 18, 21, and 23, and objects to claims 6, 7, 12, 13, 15, 17, 19, 20, 22 and 24. In response, all claims remain unamended. Applicant respectfully requests consideration of the following response to arguments presented in the final Office Action against patentability of the claims. Applicant further respectfully requests either withdrawal of the rejection of the claims or issuance of an Advisory Action to clarify the issues in preparation for Appeal.

Claim 1 is rejected as anticipated by U.S. Pat. No. 6,094,733 to Momohara (herein "the Momohara patent"). The Final Office Action maintains that the Momohara patent discloses a hierarchical program structure including a measurement level, a test level and a procedure level as claimed. Applicant maintains that it does not. Final Office Action proposes, "Applicant did not define 'hierarchical program' in the Specification, according to PTO practice the ordinary term of 'hierarchical program' is used, and the regular meaning of 'hierarchical' means 'related to' according to Merriam Webster online dictionary". In response, Applicant points out the definition of the noun, "hierarchy", as
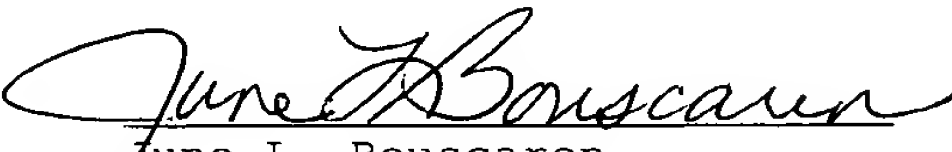
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presented in the Webster's II New Riverside
University Dictionary published by The Riverside
Publishing Company, copyright 1984, 1988 ISBN: 0-
395-33957-X in which the first sense definition of
the word "hierarchy" reads "1.a. A group of persons
organized or classified according to authority or
rank. b. A ranked or graded series". The word
"hierarchical" is listed in the same dictionary
entry as an adjective form of the noun, "hierarchy".
The adjective "hierarchical" is used in the present
Specification and claims according to the ordinary
meaning of the adjective to further describe "a
program", to indicate a program that is organized
according to rank or level. Applicant wishes to
further point out page 9, lines 21-23 of the
Specification in which the term "hierarchical" is
more specifically defined consistent with its
ordinary meaning which reads "A key aspect of the
program according to the invention is that it is
hierarchical; that is, [the program] includes
multiple levels, with each level branching to lower
levels which [each level] contains. Preferably, the
hierarchy is a four-level hierarchy including the
following levels: procedure, test, measurement and
datapoint". The Specification goes further to
explain that a procedure is an ordered list of

tests, a test is a group of measurements, and a datapoint is a subset of a measurement. See page 9, line 24 through page 10, line 4. Applicant acknowledges that for purposes of examination, terms in the claims must be given the broadest reasonable interpretation. The broadest reasonable interpretation must also be consistent with the interpretation that those skilled in the art would reach. See MPEP §2111. Windows Explorer software, used by many of ordinary skill in the software arts, displays what is referred to as a hierarchical file structure. U.S. Pat. Pub. US2003/0093736 A1 to Grey uses the term "hierarchical system" in a similar context as the present patent application and provides an indication of what one of ordinary skill in the art would understand a "hierarchical program" to mean. As used in the Grey patent, the "hierarchical program" disclosed is organized according to subcomponents of the device under test. See paragraph 16 of the Grey patent. An anticipation rejection is appropriate if and only if each and every element as set forth in the claim is found in the reference. See MPEP §2131. The program disclosed in the Momohara patent is not hierarchical in nature in that the program disclosed is not organized according to rank. The program

disclosed in the Momohara patent further is not organized to include a measurement level, a test level corresponding to one or more of said measurements, and a procedure level corresponding to an ordered list of said tests. The Momohara patent discloses a serial program with parallel processing capabilities, but does not organize the program into defined functions that are subsets or supersets of other defined functions. Accordingly, the Momohara patent is not sufficient prior art to support an anticipation rejection of the present claims because the term hierarchical as well as the hierarchical levels of measurement, test and procedure that are recited in the claims are not disclosed in the Momohara patent. Accordingly, withdrawal of the anticipation rejection is requested and allowance of all claims is solicited.

If any clarifications can be made by way of telephonic interview, the Examiner is invited to contact the Undersigned.

Respectfully submitted,
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